SUBSTANCE OF MR. BIDWELL'S SPEECH

On the second reading of his Intestine Estate Bill, in the Session of 1832.

Mr. Chairman,—The merits of this bill have, heretofore, been discussed so frequently and so fully, that it is not likely any arguments will be offered to the committee, which they have not heard and considered before; at least I do not pretend, that I can make any observations, which, by their novelty, will reward your attention. I was willing, therefore, that the vote should be taken, without any thing being said by me, except the few remarks which I made when I moved for the adoption of the preamble; for I have not been disposed, on the present occasion or any other, as the house will bear me witness, to consume time by an unnecessary debate. At the same time, sir, I was sincere when I declared, that, although I would not provoke discussion, I was not afraid of it, but was prepared and willing to argue the subject, as fully as any of the adversaries of the measure could desire. And, indeed, when I consider that it is strenuously resisted by men of great power, influence and talents, and that its success against such strong and formidable opposition must depend on the force of public opinion, which can only be formed and kept alive and strengthened by such clear explanations and such plain reasons as will remove prujudices and convince the understanding, I am not sorry, that the speeches of the hon. and learned Attorney General, and Solicitor General compel me to repeat, at length, the arguments in favour of the bill, for which I shall make no other excuse, however tedious they may seem to those, who have heard them before, than the necessity of defending the bill which has been imposed on me by the eloquent invective of my learned friend against it. The hon. and

learned Attorney General has, in fact, left me no alternative. He declares, that, in his opinion, this measure is not understood by the people. If they were as enlightened as the learned gentleman, they, would not, as he thinks, favour it. Now, although I do not agree with him in his opinion of their ignorance, but, on the contrary, believe that they understand the operation of the bill and can judge, as well as he can, whether it will suit them, yet I will admit that there may be persons who have wrong notions about it. These persons however in my opinion are found amongst its opponents, and it is because they have wrong notions that they are found in that class At all events, as it is important that such mistakes should be corrected, and as I am anxious to remove every pretence for the opinion of the Attorney General, to which I have adverted, I shall give a description of the bill. It may, in the first place, be observed that it does not interfere with the right which men possess of disposing of their property by will; of course it does not restrain the power of entailment. Whether it be consistent with sound policy to permit property to be locked up for many generations, by entailments, is a question which is not raised by this measure, and which I shall not now agitate; for the bill does not at all affect such a power. It applies only in those cases where no devise of the property has been made. In those cases it establishes a more just and equitable rule of succession, than exists under our present law. We have now the English system of descents. This was not, originally, the law of this Province, but was introduced by our general adoption of the English laws.—The law was previously in force here, which now prevails in Lower Canada, and which is very similar in principle to this bill; so that, in fact, this measure is not an innovation but rather a restoration of a former law. Indeed, Sir Wm Blackstone, and other eminent sages of the English law are of opinion that a law, like this bill, existed in England in those

best periods of its early history, when the most noble and valuable principles of our constitution were settled; such as a limited monarchy, trial by jury, and a representative democracy; and, although this opinion has been controverted, as far as respected the particular mode of succession, which then prevailed, yet it is universally admitted that primogeniture did not then obtain, but was introduced at a subsequent period and was indeed a consequence, or rather a necessary part, of the feudal system.

There are three important principles of the law of descents, which this bill will affect. The first is, the law of primogeniture; that is, the rule that the real estate shall all descend to the eldest male child, or other male relation, where there is no female connexion nearer in the line of descent. This exclusive preference of one favoured relation, to all the rest, does not exist, where all the children, or other kindred next in degree, are females; nor it is recognized in the rules which regulate the disposal of personal property. Now, it is the main object or this bill to abolish this unjust principle of primogeniture, and to substitute in its place a rule for the equal division of the real estate, like the personal property, among all the children, or other persons in the next degree of kindred where there are no children. It is this provision of the bill which has been the principal subject of discussion and dispute. There is another feature of the present law of descent which, in the second place, this bill will affect. If a man die intestate, without children, during the life of his father or mother, neither of his parents can, under any circumstances, succeed to his real estate. For want of other kindred it will descend to the remotest connections; or, if there be no other kindred than the father, t will even escheat to the crown for want of heirs. But the parents are, absolutely, and forever excluded from the inheritance; although, in most cases, the intestate is indebted chiefly to their assistance, or to their care, direction and advice for all his possessions. This re-

striction, so unjust, so unnatural, so odious, so repugnant to reason and the best feelings and affections of the human heart, will be removed by the bill, and the principle established, that the parents of every intestate who leaves no children, shall inherit his property, in preference to any other kinkred. In the thrd place, a similar spirit of exclusion prevails in our presnt law, with regard to relations of the half blood. Not only are the remotest kindred, of the whole blood, preferred to them, but they are like parents, absolutely and under all circumstances, excluded from the inheritance; so that one may have the mortification to see the intestate estate of a half-brother or half-sister escheat to the crown, for want of heirs, under our present absurd and unjust law. These two last modifications of the law have never been opposed. It would be an unpardonable waste of your time, therefore, to enter into a serious and formal argument in their favour. These, Sir, are the most important and prominent fetures of this measure; but there are some subordinate and subsidiary provisions, which I may as well perhaps not omit in its description. The first clause, which abolishes primogeniture, and the exclusion of parents and half blood from the inheritance, defines the mode of succession to intestate estates, in so particular manner and in so many cases, that a person of ordinary understanding can find no difficulty, as it seems to me, in any possible contingency, in ascertainig, from a perusal of it, the person who will be entitled to the property. The 2nd clause directs, that the personal property be divided in the same manner. In this respect the present law is not altered, except that this bill gives to the widow of an intestate, who leaves no children, all his estate, after the payment of debts, and it gives collateral kindred claiming through a nearer ancestor the preference to those claiming through an ancestor, more remote. For, under our present law regulating the distribution of the personal property, it is divided equally among the children and other kindred of equal degree

the father is not excluded but is prefered to any relations, but children; and no distinctions are recognized between kindred of the half blood and the whole blood. There may be cases where a child will receive his portion, or a part of it, during his father's life. The third clause is adapted to such cases and enacts, that, in the division of the estate, an abatement, in proportion to the part so advanced to any child, shall be made from his share. The heirs may, sometimes, be unwilling or unable from infancy or coverture, to divide the property descending to them. It is very important, therefore, to provide some convenient and cheap mode of partition, which any one may compel the others to adopt. This is the principal object of the fourth clause. The Judge of the Probate Court, and the Judge of the Surogate Court when the property is all in his District, after a suitable public notice, is authorized to make a decree of distribution, describing the heirs, by name, and their respective proportions, and to appoint three disinterested freeholders who shall divide the estate amongst them. This clause contains another important provision. An argument against the bill, which has been most vehemently and strenuously insisted upon, on former occasions was founded on the supposed tendency of this bill, where the intestate estate was small, to produce a minute and inconvenient subdivision of the estate. There will be no room, hereafter, for such an objection, for the three freeholders, mentioned before, are authorized by this clause, when they shall think the partition of property to be injudicious, to appraise it, and it is then to be sold, to the highest bidder, for the common benefit of the heirs, among whom the money arising from the sale is to be divided. The objection, therefore, to which I have adverted, cannot be made against the bill any longer. I think, indeed, that it was never entitled to much weight, although it was ingenious and specious, and made an impression on those who did not observe and reflect. The fact is, this bill is not an experiment by any means. In judging of its

effects in this as well as in other respects, we can avail ourselves of the experience of other countries, where the measure has long been in practice, and upon this ground we are enabled, with just confidence, to declare that there is no foundation for these fears, and that on the contrary, notwithstanding the equallizing effect of such a law, there is a constant tendency to an accumulation of property, and an aristocracy ofwealth. If, for instance, we look to the United States, where they have long tried such law and where by the way a man would certainly be thought insane who should propose to repeal the law and substitute for it the principle of primogeniture we do not find lands subdivided into trifling estates as our objectors predict will be the consequence ofthis bill. On the contrary notwithstanding the equalizing tendency of their republican institutions as well as of this law there is quite as great an inclination to an accnmulation of property as is compatible with the virtue and welfare and happiness of the country. The other clauses of the bill provide for the registry of the decree of the court; for a simple and easy appeal to the Court of King's Bench; and for a mutual contribution from the heirs for the payment of any debt of the intestate which may be discovered after a partition shall be made—The two last provisions are analogous to the present law regulating the distribution of personal property. The authority given by the last clause to one heir to sue his coheir, for a ratable contribution of any debt of the intestate which he may be compelled to pay, cannot lead to frequent law suits as has sometimes been objected; for the instances will be extremely rare, where any one will be so dishonest, obstinate and foolish as to refuse the payment of his share, especially when there is such an express authority for its recovery. Such, Mr. Chairman, is the bill; and I hope it will appear to be not quite such a monster as it has sometimes been represented. In my description of it, I have been led incidentally and inadvertently into some remarks which are an anticipation

of the arguments which I intended to offer in its support. I suppose, Sir, that this proposition will not be disputed in this House; namely, that laws which regulate, not the intercourse between the government and its subjects, but, merely, transactions between the different members of the community, or the conveyance or transmission of private property from one man to another, should be such as the people desire, unless they are incompatible with the safety of the government, or are unjust in their principle. I do not believe any one will deny this proposition, and, therefore, I will not stop to prove its truth. If it be granted, I think an irresistable conclusion may bedrawn from it, in favour of this measure. On the other hand I will admit that a law ought not to be passed, however wise and just it may be, unless there is some considerable practical evil which it will remove, or some practicable good which it will produce. In other words, it is not a sufficient reason for an enactment that it is the theoretically excellent,unless it is practicaly needed. For instance, however just the principle of this bill may be, and however beneficial its operation might be still, if our present law produces no serious evils, if its injustice is obviated by the practice of making will, I would not urge its alteration. I feel it to be necesarily, therefore, to shew you that there are and necessarily must be great evils under our present law, notwithstanding the right which is generally possessed of making a will. I maintain that the necessity for an alteration of the present law, which arises from its unjust operation, is not obviated by this right of disposing of the property by devise. For, in the first place, although this right is generally enjoyed, yet it is not universally possessed, and is exercised only in a few cases. Married women and minors cannot dispose of their real estates by will, and instances have been related to me of the unjust operation of our present law, which affected me not a little. In one case the father devised his property equally among his children

After fter his death, one of his children fell into a consumption. He was a minor and could not devise his share. His eldest brother had become a dissipated spendthrift, but the dying youth had the pain and mortification to foresee that his property would be squandered for vicious purposes as soon as he desecended to the grave, without the power to avert such an evil. This anecdote proves the necessity of such a law as this bill, and the conformity, with the general feelings of the people, of its provision for an equal division among the children. If such a law had existed, the father would have been spared the trouble and expense of making a will, his wishes would have been carried more effectually iuto operation as would the wishes also of the younger son, and nothing would have been done to promote and accelerate the ruin of the elder brother. But, even where there is no legal disability, wills, in a majority, probably in a large majority of cases, are not made, although the property will descend, under the present law, in a mode that is not consistent either with justice or the choice of the intestate. I shall certainly say nothing in excuse of such culpable negligence, but shall simply state the fact, which is owing to different causes in different persons. Some persons are superstitious about making a will, and because the duty is often defered until a dying hour, and they have, therefore, seen many cases where persons have died very soon after making their wills, they think that making a will is a precursor and omen of immediate death. A procrastinating temper and habit, which is unfortunately too common, is the cause why others defer and neglect making their wills. Some persons, from a want of decision of character, and perhaps from the real perplexity of the case which renders it difficult for them to determine in what mode to dispose of their property, postpone this duty. till a more convenient season, which never, however, arrives. An expectation of a change of domestic circumstances or of property is another cause of such unfortunate and fatal delay.

Some persons are so concious of their ignorance and inability to draw a will, that they are deferring it until they can conveniently obtain the assistance of those who possess the necessary skill. And there is a natural aversion in the human mind to any act which is associaated, in such a close & painful manner, with our own death as the making a will. For these reasons and others, perhaps, which might be mentioned, wills are often, very often neglected to be made, where there is no legal disability and where the intestate would not, by any means, be satisfied with the order of succession which the law prescribes. Upon this account alone, if there were no other reasons, I should argue that there was a necessity for such an alteration of the present law as would provide for this general neglect, and would be adapted to the justice of the cases in general and the probable wishes of the intestate. But, in fact, there are additional arguments for such a modification of the law. It is required, not only in those cases where no wills are made, but in many where they are For they are often void entirely. Still more frequently they are void in part and valid in part; as, for instance, they may be void as to the real estate and valid as to the personal, or void as to one lot of land or as to one devisee, and valid as to another. There may very probably be such cases as this; the eldest son, being settled during his father's life, the homestead is devised to the younger son, and the principal part of the personal property is bequeathed to the eldest son: the will is witnessed by only two persons, or by only two persons, besides the younger son. In this case the will is void as to the real estate and valid as to the personal. The effect will be this: the eldest son will take the personal property by virtue of the will and the whole of the real estate under the law of primogeniture. This would be a case of great injustice, but it is not a very improbable case. There is no uncertainty in such a case, however, as to the law on the subject. But there are many cases where wills

are so drawn as to leave room for doubts and of course for disputes and law-suits, and for family quarrels, the most lamentable. and at the same time the most bitter and inveterate of all quarrels. Persons accustomed to draw conveyances will admit, I am sure, that a will is an instrument which requires more skill and care than any other to be drawn so as to preclude such doubts. Three is such an infinite variety of circumstances & contingencies to be provided for, and there are some branches of the law which apply to wills so abstruse, we cannot be surprised to find that there arecomparatively few law suits relating to lands, which have not their origin in doubtful and disputed wills.—In too many cases, unfortunately, wills are not made in health, but on a death bed, when skilful assistance cannot be procured, and when the mind is weakened by disease, and distracted and overwhelmed by gloom and terror and anxiety. At such a time it is not likely that the division of property will be judicious, or that the will can be drawn with suitable care and in a proper manner. But where all these difficulties are avoided by care. and prudence, and skill, the intention of the testator may be frustrated by other causes. A change in his circumstances, may render his will wholly or partially void. For instance, his marriage and the birth of a child operate as an implied revocation of his will: that is, after these events a will previously made would become void, unless it were published over again. So the death of a child or other relation, or the sale or the purchase of a lot of land, may throw all the arrangements of a will into disorder, and may render a new will necessary in order to adjust the division of the property upon fair and equitable principles. For a man cannot, by any term he may use in his will, dispose of any other real property than what he then owns. If he afterwards purchases real estate, it will descend to his heir-at-law, unless a new will is made, notwithstanding the most extensive and comprehensive terms of devise. A

change too may take place in the relative value of property which will in some measure defeat the testator's intention, unless provided for by a new will.—In some cases, the same effects may follow from changes in his circumstances, which are unknown to him, and which he could not therefore adapt his arrangements to, such as succession to property on the death of some members of his family. It appears to me, therefore, that the present law which suits no case ought to be repealed, and that there is a real necessity for its alteration. A law must be unjust and is certainly unjust which requires to be guarded against in every case by testamentary provisions. To make a will isdifficult, troublesome and expensive.—How foolish it is, as well as oppressive, to retain a law, which is unjust in its operation, and so repugnant to natural affection, and the general sentiments of the country, that every honest man is compelled to make a will to defeat it, when you might just as well have one that would be so adapted to the condition of the country and the general wishes of its inhabitants as to render wills in most cases unnecessary. I recollect, sir, that on a former occasion, my honourable and learned friend, the Solicitor General, denounced the bill as a legislative attempt to make wills for every body. Now, although I am not so sanguine as to suppose that this bill, or any other measure, on this or any other subject, can be adapted exactly to the circumstances of every case, yet I wo ld support it for this reason, if there were no other in its favour, that it will in so many cases, "make people's wills," to use the language of the learned gentleman.

You will observe, Sir, that in these remarks, I have assumed the injustice of the present law; for I have confined my attention to the argument, that however, unjust the law of primogeniture might be in its operation, its injustice was obviated by the power of making a will, which, it is said, (though, as I have shewn, in some measure erroneously said,) every man

possesses. and that there was therefore, no necessity for this bill—I hope I have refuted this objection and have proved its necessity by various considerations. Having removed this preliminary objection, I shall revert to the proposition which I stated some time ago, that laws. on such subjects as this bill relates to, ought to be such as the people desire unless they are unjust in principle or manifestly inconsistent with the safety of the government. Now, I do not recollect that any one has ever contented that this bill is unjust in its principle or would operate unfairly and grieviously between man and man. But I confess, Sir, that I am not contended with this negative merit of the bill. It has still higher claims upon your favor and your cordial support. It will be an honest & equitable law substituted in place of an unjust law. The injustice of the present law is so manifest as to render proof of it unnecessary. It is unjust to the children who are disinherited, and it is unjust to society. It is inhuman in its operation; it is unnatural. The voice of nature in the heart of every parent condemns the aristocratic distinctions of the law of primogeniture, and commands him to provide equally and impartially for all who owe their existence to him. He acts unjustly to society also, if he leaves them destitute and throws the burthen of supporting his offspring on the community. He is manifestly bound to support them while he lives. Is not the obligation equally plain and forcible to provide for their support after his death, as far as it may be in his power, by an equal division of his property among them? Common sense, indeed, must teach any one that if there is to be any inequality in the division of his estate, it should be in favour of the weakest and youngest, who are least able to provide for themselves, and who require, besides, more to be done for them, in educating them and setting them up in life; so that the greatest share ought rather to be given to the females, or the youngest child than, according to our present absurd

as well as unjust law, to the eldest son, who, in many cases, is comfortably provided for before his father's death. In this country, the operation of the law of primogeniture appeares to me peculiarly unjust, because in many cases all the children contribute by their labour and exertions to the improvement and value of the landed property, which nevertheless, entirely descends to the eldest son alone. They are therefore deprived not only of a fair share of their father's property, but also of their own earnings. The injustice of the law seems tacitly and virtually recognized in the statue for the distribution of personal property, and in the law regulating the succession to real estate, where the heirs are all females. In both these cases the property is equally divided amongst the children. In these cases there are no artificial reasons, derived from the policy of the feaudal system, to control the distribution and descent of the property Justice, common sense, and natural affection only have been consulted. The result shows how little they are regarded in the law of primogeniture. To prove the injustice of that law, and to evince the justice and wisdom of the principle of this bill, and how much it is adapted to the circumstances and feelings of this country, I can refer to very high authority, which is nothing less than the practice of the government of this Province. I believe, indeed, the practice, to which I refer, has the higher authority of the sanction of His Majesty's government in England. I allude to the regulation adopted by His Majesty, George the Third, as a gracious mark of his royal favour to those whom he delighted to honour, for their devoted attachment to his Person and government, by which each of the sons and daughters of a U. E. Loyalist is entitled to a free grant of two hundred acres of land. If the law of primogeniture were wise, or just, or politic, in this Province, this Royal bounty out to be confined to the eldest son. This regulation, therefore, is really a practical and forcible declaration of the opinion of the go-

vernment on the subject. I feel guilty, indeed, of a waste of time in arguing, at so much length, a question which, after all, can be decided summarily by an appeal to the heart of every man, or, at least, of every parent. Who can be found, that would look upon his children, and tell them, that he was determined, when he died, to turn them, as beggars, upon the world, in order that his eldest son might swagger in aristocratic pomp and haughtiness! No! Mr. Chairman, it is not necessary to argue the question of the law of primogeniture. It is a self-evident proposition, an instinctive truth, which cannot be made plainer by reasoning.

But the most grave, and formidable and vehement objections to this bill, have been founded on the assumption that its tendency would be hostile to our institutions.—These are serious objections certainly, if they are all well founded; and they are peculiarly formidable because they enlist the prejudices and strongest feeling of our hearts in their favor. I must, therefore, ask the indulgence of the committee, while I attempt to show you that this measure is not inconsistent with they safety of the government, or the stability of its institutions, but will be conducive to the welfare of the country. The effect of the law of primogeniture is to create a landed aristocracy, or in other words, to throw the land of the Province into the hands of a few persons, and to leave the great body of the people, without any permanent interest in the country. This bill will have a direct contrary tendency. It will promote an equal division of landed estates among the people of the Province. The question therefore, is, which of these effects is most favorable to the welfare of the country and the durability and strength of its institutions. The answer, it seems to me, is obvious; and may be found indeed, in our statute book. That an accumulation of landed estates in the hands of a few persons is a great evil, and is inconsistent with the policy of our government, is the fundamental principle,

of our wild-land assessment law, which was passed, chiefly, for the express purpose of compelling the great land holders to part with their lands, and which was such a favorite measure with the late administration and so important, in their estimation, that the members of another branch of the Legislature, as has been proved by some of their number before a committee of this House, were compelled, during the reign of terror, by a most unconstitutional coercion, to vote for it, against their own inclinations. Now, this bill will produce gradually and safely the same result which that law, in a violent manner, was expected to effect. Therefore, if the policy of that law was good, if its tendency was constitutional, no reasonable objections, on that score, can be urged against the bill. It is rather singular I think that those objections should have been insisted upon most strenuously by the warmest friends of the assessment law. The opponents of the bill refer to England, and ask us, with exultation, to look at the unrivalled pitch of glory and wealth, and power and refinement, to which she has arrived. But I confess, Sir, that I do not see how the law of primogeniture has ever contributed to those wonderful results. They may be traced much more satisfactorily, in my opinion, to other causes; such as the morality and integrity of her people, their spirit and enterprise, the freedom of her laws and institutions, and the extent and activity of her commerce. These causes, at the same time, have counteracted the tendency, and more or less prevented or mitigated the evils, of the law of primogeniture, which, I believe, would otherwise have become intolerable. In the vast establishment which Great Britian has maintained, at an enormous and prodigal expense, the younger branches of the great aristocratic families, whom the law of primogeniture would otherwise have left in beggary, have found situations where they could live in the splendor and luxury to which they have been accustomed. So that the people of England in fact, have

been heavily taxed to support this odious and unnatural principle of primogeniture. The present condition of England, however, so far as we can judge from the accounts which we receive, affords an argument in favor of any thing rather than the law of primogeniture. Its tendency to produce an unequal division of property, is dreadfully exhibited. Its effects are, an aristocracy with the incomes of Kings, and a peasantry reduced to pauperism, and the great mass of the population without any deep and permanent interest in the maintenance of order and peace, and full of discontent. If you have a landed aristocracy, you must have a population that really have no deep or permanent interest in the peace of the country or the stability of existing institutions. It is of little consequence then, whether they remain or remove. Whatever wealth they possess being moveable, they can transport it to other countries, if they please. They have very little, therefore, staked on the maintenance of peace or the permanence of our institutions. Many of them, perhaps, have an interest in fomenting disorders and convulsions, in which they will lose nothing and have a chance to gain something. But, if the landed property of the country is pretty equally divided amongst its inhabitants, you increase the number of those who have property in the country, which they cannot remove, and an interest, therefore, in remaining here, and in preserving peace and order, and in resisting foreign attacks or internal commotions, which may endanger the institutions of the country. I recollect that when this bill was under discussion last year, I referred to the conduct of the French people during their revolution, in illustration of this sentiment. The history of a nation cannot present to us a greate contrast, than we find between the excesses and the diabolical brutality and fury of their first revolution, & their moderation and magnanimity during the last. I have no doubt that various causes contribute to produce such a wonderful improvement in their conduct

but not the least, I am persuaded, was the abolition, during the reign of Napoleon, of the law of primogeniture, and the adoption of the law of equal partibility of landed estates. Under the operation of the last mentioned law, the great body of the people have become freeholders. It was their interest, therefore, to check and prevent civil war and all disorders which would put their property in jeopardy, as well as to resist the cowardly, faithless, and murderless tyrant who would have reduced them to a dependence upon his arbitrary will. The world beheld their herioc defence of their rights and liberties with admiration; but they beheld them with still greater admiration conducting to the borders of the kingdom in safety, the perfidious, mortified, abject despot, who had deluged the streets of his capital with the blood of his subjects, and their dismissing him with cool contempt. It was a nation of freeholders, who exhibited this unparalleled and glorious example. The law of equal division of intestate real estate, contributed in my opinion, to this extraordinary result. In order to show more clearly how little dependence can be placed on men who are not freeholders, whatever their wealth may be, I will read an extract from the writings of Adam Smith:—

"The capital that is acquired to any country by commerce and manufactures, is all a very precarious and uncertain possession, till some part of it has been secured and realised, in the permanent improvement of its lands. A merchant, it has been said very properly, is not the citizen of any particular country. It is in a great measure indifferent to him, from what place he carries on his trade, and a very trifling disgust will make him remove his capital, and with it all the industry which it supports, from one country to another. No part of it can be said to belong to any particular country, till it has been spread, as it were, over the face of that country, either in buildings or the lasting improvement of lands. No vestige now remains of the great wealth, said to have been possessed by the greater part of the Hanse towns, except in the obscure histories of the thirteenth and fourteenth centuries. It is even uncertain where some of them were situated, or to what towns in Europe the Latin names given to some at the end of the fifteenth and beginning of the sixteenth centuries, greatly diminished the commerce and manufactures of the cities of Lombardy and Tuscany, those countries still continue to be among the most populous and best cultivated in Europe. The civil wars of Flanders, chased away the great commerce of Antwerp, Ghent and Bruges. But Flanders still continues to be one of the richest, best cultivated and most populous provinces

in Europe. The ordinary revolutions of war and Government easily dry up the sources of the wealth which arises from commerce only. That which arises from the more solid improvements of agriculture is much more durable, and cannot be destroyed, but by those violent convulsions occasioned by the depredations of hostile and barbarous nations for a century together; such as happened for a century before and after the fall of the Roman Empire, in the western provinces of Europe."

This extract shows how important it is that the landed property should generally be divided amongst the inhabitants of the country. In these new countries, people are more inclined and accustomed to rove, than in old countries. It is peculiarly easy to leave this Province, and there are many temptations to do it. But persons who own land are less likely to remove, even for a season, than others. Besides, such persons are induced by their necessities, or convenience, or pride, or humour, to expend a part of the money, gained by their industry and labour, on their land. This is so much added to the fixed and permanent wealth of the country, which cannot be lost or withdrawn. A general division of the landed property is on this account preferable to an accumulation of it in the hands of a few. The supposed tendeney of the bill to produce such an effect is, therefore, a recommendation in its favour. The evils of an accumulation of landed property and of the unequal division of it among the inhabitants of a country are described in a just and forcible manner by Sir William Blackstone in his celebrated Commentaries. On that account & because he was the advocate or rather apologist of the law of Primogeniture, I shall read the passage; although I do not admit the truth of his opinion, that the right of disposing of the property by will prevents the evils of the laws of primogeniture. He says that "the ancient law of the Athenians directed that the estate of the deceased should always descend to his children: or, on failure of lineal descendants, should go to the collateral relations: which had an admirable effect in keeping up equality and preventing the accumulation of estates. But when Solon made a slight alteration, by permitting them (though only on

failure of issue) to dispose of their lands by testament, and devise away estates from the collateral heir, this soon produced an access of wealth in some, & poverty in others: which, by a natural progression, first produced popular tumults and dissensions; and these at length ended in tyranny, and the utter extinction of liberty: which was quickly followed by a total subversion of their state and nation. On the other hand, it would now seem hard, on account of some abuses, (which are the natural consequence of free agency, when coupled with human infirmity,) to debar the owner of lands from distributing them after his death as the exigence of his family affairs, or the justice due to his creditors may require. And this power if prudently managed, has with us a peculiar propriety; by preventing the very evil which resulted from Solon's institution, the too great accumulation of property: which is the natural consequence of our doctrine of succession by primogeniture, to which the Athenians were strangers. Of this accumulation the ill effects were severely felt even in the feudal times; but it should always be strongly discouraged in a commercial country, whose welfare depends on the number of moderate fortunes engaged in the extension of trade.

There is another consideration of a political nature in favour of this bill, which I believe has never been mentioned. The Elective franchise, except in towns, is confined to freeholders. If the landed property of the country should be accumulated in the hands of a few, the elections of members of this house would be less popular, and the great body of the people would have no voice in the laws by which they would be governed. This house would cease to be the democratic branch of the Legislature, and would be converted into a mere committee of aristocrats. It might then degenerate into a sycophantic office for registering the decrees of the Executive; in which case nothing could save it from contempt, but a solemn declaration of its own immaculate purity, which, of course, would

be an infallible method of maintaining its own dignity. At all events, it is, in my opinion, desirable that the number of freeholders and electors should be increased. The elective franchise ought not, upon any account, to be confined to a few persons. Whether it should be extended to those who are not freeholders, it is not necessary for us to consider. There might be well-founded objections against such an extension of it. Our constitutional act does not give us the power so to enlarge it, nor would this bill produce such an effect. But that it ought to be extended by multiplying the number of freeholders, and increasing them in proportion to the whole population, seems to me undeniable. In this respect, the bill would have a gradual, but salutary and favorable political effect.

The operation of this bill in another point of view is not unworthy the consideration of the committee.—We have a large provincial debt, and there is a fine prospect, I think, of its gradually, and, I am afraid, rapidly increasing. For this debt the land really is pledged. We may certainly, directly or indirectly, tax industry and labor and personal property, in order to liquidate it: but they may be removed, and if the burthen should be heavy, it is likely they will be removed to other countries. But the landowners cannot remove their property. By increasing their number, you increase the number of those who must pay the debt; and what is still more important, you increase the number of those who have a direct and special interest in preventing the accumulation of a debt. And, Sir, when I look at the history of our finances, and see how inconsiderately and imprudently our present debt has been contracted: and when I consider how many inducements the members of this House have, to grant money, when they can leave to their successor the odious task of providing ways and means to raise it: and how likely it is, that our debt will be greatly augmented, I confess I am in favour of every reasonable method of multiplying checks against its increase.

In addition to these arguments in favour of the bill, I must refer to authority of no mean weight in its support. I have already shewn the sense of the government to be on our side in the practice of grants to the children of U. E. Loyalists. I shall now fortify it by the favourable opinion of another branch of the Legislature. Some years ago, Sir, the Legislative Council passed a bill exactly similar, in its principle, to the one on the table before you. It originated in that House, and came from a gentleman of the highest consideration in it. It was unfortunately lost in this House, by the casting vote of the Speaker. No one has ever suspected that honorable House of too great a leaning towards popular institutions, or of not being sufficiently zealous in support of aristocratic principles and institutions. I think the attempts, therefore, unfair which have been made, to raise a hue-and-cry against this measure, as utterly subversive of our constitution. From such a charge I hope it has been vindicated by authority, as well as reason.

Nevertheless as an authority in favour of this bill, I must also notice the policy of the government of this province of giving small grants of land to emigrants and of encouraging them to resort to this country and obtain such grants. At the same time we know large grants are uniformly and very properly refued. Nothing can be more opposed to the project of building up a landed aristocracy in this province. In this respect the tendency of the bill is trifling compared with this practice.

The influence of the bill in promoting the welfare of the country may be inferred from its effect in favor of morality. I confess that it is my wish to see property pretty equally divided in this province, from a sincere conviction, that such a condition is most favorable of any to virtue and happiness. I would not, indeed, forbid the accumulation of property, but I would adopt such laws as have a gradual tendency, without interfering with the free acquirement or dis-

posal of property, to counteract the approximation, which is always produced in society by other causes, towards an unequal division of it.

The present law is, in other respects, unfavourable to virtue and morality. It presents a temptation to roguery. The eldest son of an intestate father cannot retain the property which the law gives him, without violating good conscience and natural affection.

There are cases, perhaps, where the heir, in consideration of the patrimony which he inherits, assumes the support of the family. The other children will feel, however, that they are dependant. They will look upon him with envy, and will be jealous and distrustful of his kindness; and, on the other hand, will perhaps be regarded by him as a burthen. I think no parent would wish to leave his children in such a condition.

It is an object of great importance, in my opinion, to have laws that correspond with the circumstances and feelings of the people, and that give general satisfaction and contentment. I am anxious, Sir, to procure for this province such a code of laws, that we may be proud of them, and may be able, with truth and sincerity, to boast before the world, that we have the best laws, the most wise and just, and adapted to make us happy, of any country on the globe. But it is notorious, that the law of primogeniture is generally odious in the province. No one can wonder that it is so. Its principles are radically unjust. And it is opposed to the natural affections of the human heart, which constantly rise in rebellion against it.—You cannot legislate a man into a [illegible] No laws you can pass will make him hate his children, though they may have the misfortune to be democratically born after their aristocratic elder brother. Even the honorable and learned Attorney General admits the general sentiment of the people to be in favor of this measure. He accounts for it, to be sure, on the ground of their ignorance of it's operation and ultimate effect.

Now, I believe, that the more thoroughly they understand it, and the more they see and reflect upon our present law, the more strongly they will be in favor of this bill. It might, indeed, be a delightful sight to the eyes of the hon. Attorney General, to behold a provincial Lord going forth in a splendid equipage, and with a numerous retinue of proud and lazy and liveried menials, and to see ten or twenty miles square of fine land enclosd with a lofty wall, as his Lordship's park, and filled with man-traps and spring-guns. It might gratify the aristocratic tendencies of the honorable and learned gentleman to have a snug provincial code of game laws, under which the poor plebeian should be liable to be sent to Botany Bay, if he had the audacity to kill a partridge or a hare; but I believe when the people saw these effects of the law of primogeniture, they would not admire it, any more than they do at present. The truth is, there are one or two circumstances, which have prevented this law's being so unpopular heretofore, as it is likely to be in future. One of these is the practice of the government of giving a lot to each of the children of the U. E. Loyalists. This has defeated very generally the evils of the law. But this cause will soon cease, especially if the government continues to impose settlement duties and other burthens equal to the value of the land. There is another reason, peculiar to this country, why the law has not operated so grievously as it may be expected to do. Many persons are prevented from availing themselves of the law by the influence of public opinion. Many elder sons, who inherit their father's property, are induced, either by affection and conscience, or by the fear of public opinion, to divide the patrimony of their brothers and sisters.

I do not contend, Sir, that the law of primogeniture ought to be repealed in England. I am not

called upon to discuss that question : and I should need more information than I possess, before I would decide it. The adoption of such a measure there involves very different considerations from its adoption here. I shall notice some of the distinctions. In England there is a great amount of wealth, exempt from the operation of the law of primogeniture, invested in the funds, or embarked in commerce, for her merchants are Princes. In this agricultural country the property is chiefly real estate ;—it is, therefore, under the operation of that law.

England is groaning under a redundant and burthensome pupulation. The law of primogeniture is thought by political economists to be a check on its increase. In this country, where we need labor, it is good policy to adopt the law of equal partibility : for a division of property will promote marriages and a consequent increase of population.

In England there is a deep and settled veneration for the noble and opulent and ancient families, which constitute their aristocracy. It is the effect of early impressions and long cherished habits. Those families are associated with the most glorious events and achievements in their history, and their very names are regarded with reverence. But what kind of veneration is likely even to be felt for our provincial aristocracy, which is associated with no more soul-stirring ideas than those of shrewd land speculators ?

In England there are many situations under government where the younger sons are provided for. I hope we shall never resemble the parent country in that respect, even if the law of primogeniture should continue in force.

It is said that the division of property, which this bill will have a tendency to produce, is prejudicial to the agricultural improvement of the country. It can easily be determined, whether this objection is well founded, by a reference to the other countries. I

the land better cultivated in this province than in the United States, or in our sister colonies? We know very well that we have no cause for self-gratification on this head. I will read on this subject the opinion of Mr. Humphreys, an eminent English lawyer, which I recollect to have quoted last year. It is an extract from the preface to the second edition of his work on real property. He says he has "left out "the comparison between primogeniture and equal "partibility, because, since the former publication, he "has perused the civil code of the Netherlands, "and has traversed the country, in almost every "direction. The one establishes equal partibility; "the other exhibits a country cultivated like a gar-"den, with a peasantry thoroughly at its ease." I protest, Sir, that I am unable to comprehend how the country would be better cultivated, if the eldest son inherited all his father's landed property, than if it descended to all the children equally. By the way, the King of the Netherlands and his nobility do not seem to find in the law of equal partibility those democratic tendencies which some of our sagacious and enlightened statesmen discern, although the former are enabled to judge not merely from theory, but also from actual experiment.

The truth is, Mr. Chairman, the law of primogeniture is a relic of a barbarous age and of a system of military despotism, that was as hostile to the improvement as to the liberties of man. It was imposed on England by the strong arm of a military conqueror, and the men of Kent to this day, glory in their exemption from this badge of servitude and subjection, altho' for want of such a provision as this bill contains, it is said that, in some extreme cases, the law of Gavilkind, which prevails in that county, has in the long lapse of several centuries, produced a minute and inconvenient sub-divison of property. The law of primogeniture is evidently a part of the feudal system. In

the rude and violent times, when it was established, such an iron despotism might have been necessary for the protection of society from anarchy; but it is inconsistent with the spirit of the age. Its fundamental maxims were directly opposed to the true principles of a free constitution. Under the feudal system every thing was derived from the Lord, and was held during his pleasure, and for his benefit. For this reason the estate descended to the eldest son, who would be most likely to be able to render in return the military services, which were the consideration for it, to the Lord. But the true principle of a free government is the very reverse of this system,—it is this, that every thing is derived from the people, and held for their benefit. For their benefit the King himself is clothed with majesty and power, which he derives from them by their common tho' tacit consent. In those barbarous times the only power that existed was the power of the battle-axe and the sword, the power of physical force. In such a state of things, the common safety seems to require a stern and unrelenting disposition like the feudal system. But, Sir, it is our good fortune to live in happier and more enlightened times, when reason and truth and public opinion are exerting a far greater power than mere brutal force can ever possess. Our institutions and laws should be adapted to this different condition of things.—They should be reasonable and just; and such they must be and will be, although the consequence may be the destruction occasionally of an antiquated principle, which is not suited to our wants and feeling, although it may be venerable in the eyes of some persons on account of its antiquity. We find accordingly a gradual departure in the Legislature of the parent country from these ancient maxims and laws. An heir is not bound by the law of England to pay the debts of his ancestors, unless they were secured by judgment or by instruments under the

ancestor's seal, expressly binding the heir. This is the very spirit of the feudal system, and I cannot say that it is more unnatural or unreasonable or unjust, than the law of primogeniture, But the British Parliament did not think it so very important to build up a landed aristocracy in the Colonies, as to continue here this immunity of lands from the payment of debts. They have modified the law in England in other respects, in order to accommodate it to the spirit of the age, When a man dies, owning lands, during the life of another who survives him, his estate even in England is divided like goods and chattels. Now, this is in fact an abolition, in such cases of the law of primogeniture, and an adoption of the very principle of this bill; for at common law, such an estate would descend to the heir at law, like other landed property, and this modification is the effect of an express purpose. By a still more modern innovation, which the British Parliament has urged upon the law of real property, the land of deceased widows are subjected to process from courts of inquiry for the payment of the debts. All these modifications have a tendency to reduce to an inglorious equality with goods and chattels, and to emancipate them from the unnatural rules of the feudal system. This is the only one, I believe, of the five British North American Provinces, where the law of primogeniture prevails. And there is no disposition to adopt it in any of the other colonies, when they are enabled by experience to judge of the practical effect of another system; but on the contrary, there is a strong repugnance to its introduction. There is a part of Lower Canada, where it has lately been introduced by the British Parliament, as their court of appeals have determined and it gives great dissatisfaction. I will read to you the remarks of Mr. Peck, a lawyer and a member of the House of Assembly. He is speaking of the English mode of conveyance, and their laws of succes-

sion and primogeniture. He says, "The English law in these respects, is repugnant to the feelings, the wishes, and the manners of that part of the country. Few of them understand it, and almost all desire to have nothing to do with it, more than with any species of aristocracy, which a few persons have been found to advocate, and to which the law of primogeniture inevitably tended. They look upon the law of succession as not consistent with natural justice: all wish that the brothers and sisters of each family shall be equal in their rights of succession, and it is the desire of parents to provide equally for their children. In this country, we have no commissions in the army or navy, no government patronage to provide for younger sons." Such is the language which Mr. Peck is reported to have used in the House of Assembly. He is a representative from the Eastern Township, and cannot be supposed to be at all under the influence of those national feelings, which, it may be said, attach the inhabitants of French origin to their own laws. I quoted last year the opinions of other Lower Canada lawyers of established character, in favor of the law of that Province on this subject. These opinions were given before a committee of the British House of Commons, and are entitled to respect. Why is it that we cannot have the law here? They enjoy it in other colonies, whose loyalty we will not dispute, and they are upon trial attached to it. The people very generally desire it here. And if it were a law in existence, no man living would be so foolish and so presumptuous, as to propose its repeal. It is not unconstitutional; it is not inconsistent with the principles of the British Constitution. If it were, the British Parliament would not have left us at liberty to adopt it, but would have fixed the law of primogeniture as one of the principles of our Constitution. But they did nothing of the kind; when they passed the act of constitut-

ing the Provincial Parliament and defining its powers, although the principle of equal partibility of intestate real estate was then incorporated in the law of the Province. In fact, the law of primogeniture would not this day have been in force here, if our own Legislature had not inadvertently, as I suppose, introduced it by a general adoption of the laws of England.

I am not sanguine of the immediate success of this measure. It is opposed with great warmth by men of influence and talent. Some of them are exceedingly haughty and tenacious of their own opinions, and not accustomed or disposed to concede one jot or tittle to the sentiments or feelings of others. They will, of course, resist it, with all their might. Under these circumstances, its success must depend on public opinion. Upon this account I am not sorry that the honorable and learned crown lawyers oppose it with all their eloquence and ingenuity, though, on other accounts, I wish these powerful auxiliaries were enlisted in its favor. They have provoked discussion which will be useful. I am persuaded it will confirm and strengthen the public opinion, which I know prevails in its favor, and which will finally force this measure, not only through this house, but also thro' the other branch of the Legislature. For, Sir, it is not possible for a few men, however great they may be in their own estimation, long to resist the reasonable, and well ascertained wishes of the community. Even the Grand Signior has to yield to public opinion. It is only because a full discussion of the subject, embracing, certainly on my part, little that is original or novel, and much that has been often repeated, will remove prejudices, and produce conviction in honest minds, and thus have an important influence upon public opinion, that I have made such a long speech, which has not exhausted your patience more than it has my strength.